

IN THE
Supreme Court of the United States

October Term, 1978

No.

78-631

BILLIE V. BUSH

Petitioner

v.

MAYOR RAY WEBSTER, Et Al.,

APPENDIX

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A P P E N D I X

APPENDIX
IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF ALABAMA
JASPER DIVISION

BILLIE V. BUSH,
PLAINTIFF,

VS. CA76-H-595-J

MAYOR RAY WEBSTER, CHIEF
OF POLICE JOHNNY GRANT,
POLICEMAN OLIN A. SANDER-
SON,

DEFENDANTS.

MEMORANDUM OF DECISION

This cause came to be heard at the pre-trial hearing conducted in Jasper, Alabama, on October 7, 1976. At that time, counsel for defendants indicated a desire to file a motion for summary judgment and plaintiff stated that he would be able to respond by counter affidavits and related material. On October 26, 1976, defendants filed a motion for summary judgment with supporting affidavits. By order of this court on November 1, 1976, a filing schedule was issued which has been complied with by both parties. This matter was deemed submitted to this court for decision on December 14, 1976, by the November 1, 1976 order. The court has considered the complaint, the answer, defendants' motion for summary judgment, the affidavits of each of the four named parties, the plaintiff's answer to the motion for summary judgment, the affidavits of each of the four named parties, the plaintiff's answer to the motion for summary judgment, plaintiff's motion for discovery, and defendants answer to the motion for discovery, and is of the opinion that the motion for summary judgment for the defendants is due to be granted.

The plaintiff commenced this action on April 27, 1976, challenging the legality of the events which transpired on the night of April 4, 1975, and the subsequent 21 days resulting from plaintiff's arrest for violating the prohibition law. On the night in question plaintiff was driving through Marion County, Alabama, on Highway 78 en route to Atlanta, Georgia. There is some disagreement as to whether defendants Grant and Sanderson stopped the plaintiff or whether they were merely following the plaintiff and he stopped of his own accord. In any event, defendants Grant and Sanderson charged plaintiff with driving while intoxicated and transported the plaintiff to the police station in the city of Winfield in Marion County to give the plaintiff a Photo Electric Intoximeter test (PEI). The results of the test were 0.06, which falls within the middle category of test results described in Alabama Code, Title 36, Sec. 155 (1973 Cum. Supp.) which would neither give rise to a presumption that the plaintiff was under the influence of intoxicating liquor. Alabama law allows a finding of 0.06 to "be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor." Although it was in their discretion to detain plaintiff further, as articulated by this statute, defendants Grant and Sanderson decided to let plaintiff go free--however, plaintiff refused to leave. As plaintiff himself narrates in his affidavit, after defendants Grant and Sanderson learned of the results of the PEI:

"The one who appeared to be the leader (Grant) returned to me my keys, drivers license, and said, 'You are lucky. Now hit the road and keep going.' I said, 'I am not ready to go. I intend to find out who you are and what this is all about.' "

(Bush affidavit, page 4)

After some discussion plaintiff was arrested for violation of the prohibition law for the possession of an open nontaxed Alabama wine bottle in the passenger area of his vehicle. Plaintiff was then told he could put up \$117.50; get two property owners in the county to sign his bond; or, he could go to jail. Plaintiff chose the latter alternative.

The next morning, at (9:00A. M., plaintiff was brought before defendant Webster and was told that the next day for city court for the town of Gu-Win would be April 25, 1975. Plaintiff was given the option of putting up \$65 cash bond and returning in 30 days for the trial. This plaintiff refused to do even though he had cash in excess of this amount in his possession. Instead, plaintiff chose to return to jail to await his trial. Defendant Webster stated that on April 8, 1975, three days after plaintiff's arrest, he went to see plaintiff in the Marion County jail. When plaintiff again refused to post \$65 bail, defendant Webster then advised plaintiff that he could sign his own bond and go home. Again the plaintiff refused to leave the jail. Plaintiff does not refute this sworn statement of defendant Webster, and states in his own affidavit that on or about April 23, 1975, the defendants Webster and Grant "urged me to

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leave the jail, under any bond terms I wanted, but I would have to come back for trial on May 3, 1975. I refused their offer..." (Bush affidavit, page 11) The trial of the plaintiff was held April 25, 1975. Plaintiff was convicted. He was fined \$50, ordered to pay \$15 court costs and sentenced to 30 days in jail. The fine, the costs and the jail sentence were suspended and plaintiff was informed that he was free to go. Plaintiff indicated a desire to appeal his conviction to the Circuit Court of Marion County. When plaintiff was returned to the Marion County jail to pick up his belongings, plaintiff indicated that he wanted to remain in jail until his appeal was heard. The Sheriff of Marion County allowed plaintiff to stay one more night in the Marion County jail since it was after 5:00 P. M. and plaintiff did not have anywhere to stay that night, but also told plaintiff that he must leave the next morning. Plaintiff spent the night of April 25th in Marion County jail and left the next morning around 8:00 A. M.

It is unquestioned that the plaintiff's 21-day stay in the Marion County jail was due to plaintiff's own refusal--not inability--to post a bond. Indeed, the facts show a concern for plaintiff's well being by the defendants as evidenced by their frequent visits to check on plaintiff in Marion County jail, in Hamilton, several miles from Gu-Win. Plaintiff instituted habeas corpus proceedings in Marion County Circuit Court and in this court (Ca75-A-462-J), each to no avail. Plaintiff's case was also investigated by Special Agent H. H. Willis from the Birmingham office of the Federal Bureau of Investigation which would indicate any wrongdoing by any of the defendants. Also, an examination of plaintiff's request for habeas corpus with this

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court discloses no new evidence which would indicate that this summary judgment should not be granted.

For the foregoing reasons, the court is of the opinion that there is no genuine issue as to any material fact and that the defendants are entitled to summary judgment as a matter of law. An appropriate order will be entered.

DONE this 17th day of January, 1977.

James H. Hancock
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION

BILLIE V. BUSH,
PLAINTIFF,
VS. CA76-H-595-J
MAYOR RAY WEBSTER, CHIEF OF
POLICE JOHNNY GRANT,
POLICEMAN OLIN A. SANDERSON,
DEFENDANTS.

ORDER GRANTING SUMMARY JUDGMENT

In accordance with the Memorandum of
Decision entered this day, it is here-
by

ORDERED, ADJUDGED AND DECREED THAT the
defendants' motion for summary judgment is
GRANTED and that plaintiff Billie V. Bush
have and recover nothing from the defendants
Ray Webster, Johnny Grant and Olin A. Sander-
son. Costs are taxed against the plaintiff.

DONE this 17th day of January, 1977.

James H. Hancock
UNITED STATES DISTRICT JUDGE.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 77-1317
Summary Calendar

BILLIE V. BUSH,
Plaintiff-Appellant,
versus

Mayor Ray Webster, Et Al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(February 17, 1978)

BEFORE THORNBERRY, RONEY AND HILL, CIRCUIT
JUDGES.

PER CURIAM: AFFIRMED. See Local Rule 21.¹

It IS FURTHER ORDERED that appellant's
pro se motion to return property is DISMISS-
ED for want of jurisdiction. Appellant did not
seek such relief in the district court as part
of his claim under 42 U. S. C. Section 1983,
even under a most liberal reading of his com-
plaint. As a result, the motion is before
this court as an original matter, and in such
posture we lack jurisdiction. See 28 U. S. C.
Section 1651; Anderson v. Beto, 469 F.2d
1076 (5 Cir. 1972); Lamar v. 118th Judicial
Dist. Court, 440 F.2d 383 (5 Cir. 1971).²

Costs are taxed against plaintiff-appellant

*Rule 18, 5 Cir., see Isbell Enterprises, Inc.
v. Citizens Casualty Co. of New York, et al.,
5 Cir. 1970, 431 F.2d 409, Part 1.

¹ See N.L.R.B. v. Amalgamated Clothing Workers
of America, 5 Cir. 1970, 430 F.2d 966.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 77-1317

BILLIE V. BUSH,
PLAINTIFF-APPELLANT,

versus

MAYOR RAY WEBSTER, ET AL.,
DEFENDANTS-APPELLEES.

* - - - -
Appeal from the United States District Court
for the Northern District of Alabama
- - - - -

ON PETITION FOR REHEARING AND PETITION FOR
REHEARING EN BANC

(Opinion 2/17/78, 5 Cir., 197 , F.2d)
(April 19, 1978)

Before THORNBERRY, RONEY AND HILL, Circuit
Judges.

Per CURIAM:

(X) The Petition for Rehearing is DENIED and
no member of this panel nor Judge in regular
active service on the Court having requested
that the Court be polled on rehearing en banc,
(Rule 35 FRAP; Local Fifth Circuit Rule 12)
the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

Homer Thornberry

United States Circuit Judge

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TOWN OF GU-WIN
vs.
BILLIE V. BUSH

No. 9430

IN THE CIRCUIT COURT
OF MARION COUNTY, Ala.

ORDER

This being the day heretofore set for
hearing any motion and for trial of this
cause, this case being called and the
Defendant, Billie V. Bush, appears in
person and the Town of Gu-Win, being
called, made no appearance, and the Court
considering all of the documents filed in
this cause, now upon consideration of the
foregoing,

IT IS ORDERED, ADJUDGED AND DECREED that
the Town of Gu-Win has abandoned the prosec-
ution of this cause, and this cause is here-
by dismissed for want of prosecution, and the
Defendant shall not be required to further
answer or appear, and is entitled to re-
imbursement of any cash bond he may have made.

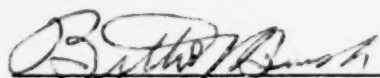
Done this the 6th day of November, 1975.

Carlton Mayhall, Jr.
JUDGE

cc: Billie V. Bush
Town of Gu-Win
Quentin Brown, 1327 City Federal Bldg.
Birmingham, 35203

I, Billie V. Bush, attorney pro-se for the petitioner, do hereby certify that I have this day mailed three true and correct copies of the above and foregoing Appendix to the Honorable Jerry Guyton, Counsel for Defendants Mayor Ray Webster, ET AL, at his usual business address, Box 82, Hamilton, Alabama 35570.

This the 26 day of September, 1978.



Billie V. Bush
Pro Se